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**Chapter 15-01 General Provisions**

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**Chapter 15-01 General Provisions****15-01-01 Short Title**

This Title shall be known as the "Land Development Code of Sandy City, Utah 2002" and may be so cited and pleaded.

**15-01-02 Authority**

This Title is adopted pursuant to the provisions of the Utah State Code, including Chapter 10-9, Part 4.

**15-01-03 Purpose**

This Code shall establish Zone Districts within Sandy City. It shall provide regulations within said districts with respect to the use, location, height of buildings and structures, the use of land, the size of lots, yards and other open spaces, and the density of population. This Code shall provide methods of administration and enforcement and provide penalties for the violation thereof. It shall establish boards and commissions and define their powers and duties. It shall also provide for planned development within Sandy City. Specifically, this Code is established to promote the following purposes:

**General**

- A. To enhance the economic well-being of Sandy City and its inhabitants;
- B. To stabilize property values;
- C. To facilitate adequate provision for transportation, water, sewage, schools, parks and other public requirements;
- D. To facilitate the orderly growth and development of Sandy City;

**Implementation of General Plan**

- E. To coordinate and ensure the execution of the City's General Plan through effective implementation of development review requirements, adequate facility and services review and other goals, policies or programs contained in the General Plan.

**Comprehensive, Consistent and Equitable Regulations**

- F. To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

**Efficiently and Effectively Managed Procedures**

- G. To promote fair procedures that are efficient and effective in terms of time and expense;
- H. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed and elected officials; and
- I. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.

**15-01-04 Relationship to General Plan**

The adoption of this title is consistent and compatible with and furthers the goals, policies, objectives and programs of the General Plan. It is the intent of the City Council that regulatory decisions made pursuant to this Title be consistent with the General Plan. In the event of a conflict between this Code and the General Plan, this Code shall prevail.

For purposes of this subchapter, "consistency with the General Plan" means not only consistency with the Plan's land use and density designations, but also consistency with all aspects of the General Plan, including those that promote compatibility of uses and densities, and orderly development consistent with available

resources.

#### **15-01-05 Effect On Previous Ordinances And Maps**

The existing ordinances covering zoning, in their entirety, and including the maps heretofore adopted and made a part of said ordinances, are hereby superseded and amended to read as set forth herein. This Code, including the attached map or maps shall be deemed a continuation of previous codes and not a new enactment, insofar as the substance of revisions of previous codes is included in this Code, whether in the same or in different language. This Code shall be so interpreted upon all questions of construction relating to tenure of officers and boards established by previous codes, to questions of conforming or nonconforming uses and buildings and structures, and to questions as to the dates upon which such uses, buildings, or structures became conforming or nonconforming.

#### **15-01-06 Interpretation**

Interpretation and application of the provisions and requirements contained herein are declared to be the minimum requirements for the purposes set forth, unless otherwise specifically stated. If in the course of administration hereof, a question arises as to the meaning of any phrase, section, or chapter, the interpretation thereof shall be given by the Director of the Community Development Department of Sandy City and shall be construed to be the official interpretation thereof. In the event that there is a need of further interpretation by any person, firm or corporation or official of Sandy City, they shall submit the question to the Planning Commission which, unless otherwise provided, is authorized to interpret the ordinance and such interpretation shall be final.

#### **15-01-07 Conflict**

This Code shall not nullify the more restrictive provisions of covenants, agreements, other ordinances, or laws (which are not superseded by this Code) but shall prevail notwithstanding such provisions which are less restrictive.

#### **15-01-08 Licensing**

All departments, officials, and public employees of Sandy City which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Code and shall issue no permit or license for uses, building, or purposes where the same would be in conflict with the provisions of this Code. Any such permit or license, if issued in conflict with the provisions of this Code, shall be null and void.

#### **15-01-09 Severability**

Should any article, section, clause or provision of this Code be declared by the courts to be invalid, the same shall not affect the validity of the Code as a whole or any part thereof other than the part so declared to be invalid.

#### **15-01-10 Administration of Land Development Code**

This Chapter shall establish duties and responsibilities for the Director of the Department of Community Development, hereafter referred to as "the Director", and other city officials and agencies, with respect to the administration of the Land Development Code. Such duties and responsibilities are established to fulfill the purpose and intent of Title 6, Sandy City Administrative Code.

#### **15-01-11 Fees**

A fee for certain reviews and permits shall be charged. No such fee listed herein or part thereof shall be returnable in the event that the permit or approval applied for is denied. A fee schedule is available at the Office of the Department of Community Development. Fees are set annually by ordinance by the Sandy City Council.

**15-01-12 Director Of The Community Development Department**

In addition to duties described in Title 6, Sandy Administrative Code, and elsewhere in this Title, the duties of the Director shall be as follows:

- A. **Reviews and Approvals.** The Director shall be authorized to undertake reviews, recommendations and approvals as described in Section 15-01-13 of this Code.
- B. **General Plan.** The Director shall assist the Planning Commission in the development and implementation of the General Plan for the physical and economic growth of Sandy City, and shall prepare population and growth studies in support of the General Plan.
- C. **Administrative Staff Assistance and Technical Advice.** The Director shall provide staff assistance to the Planning Commission and Board of Adjustment. Staff assistance shall include attendance at regularly scheduled meetings and the preparation and publication of agendas. The Director shall act as technical advisor to the Mayor, City Council, and other City departments upon request, and other committees and commissions as the council may designate.
- D. **Delegate Responsibility.** The Director may appoint authorized representatives to execute the responsibilities as described above.

**15-01-13 Administrative Reviews And Permits**

- A. **Review for Building Permits.** The Chief Building Official shall submit all applications for building permits to the Community Development Director for review. Such review shall assure compliance with the regulations of this Code. The application for a building permit shall be accompanied by set of building plans, a plot plan showing lot lines and dimensions, locations of structures and improvements, requirements, building height limitations, and all data necessary to show that all yard requirements and other provisions of this Code are met. The Chief Building Official shall issue no building permit until the application is approved for zoning compliance by the Director.
- B. **Review for Business Licenses.** The Director shall also review and approve all applications for business licenses, or renewal of such licenses, to assure compliance with this Code.
- C. **Site Plan Review.** The Director shall receive all applications for Site Plan Review, as provided for in Chapter 15-11, Development Review. The Director shall receive all submittals, assure completeness, and prepare submittals for review.
- D. **Conditional Use Permit.** Applications for Conditional Use Permit shall be submitted to the Director as provided for in Chapter 15-05, Permissible Uses and Standards. The Director shall receive all submittals, assure completeness of submittals, and prepare submittals for review by the Planning Commission.
- E. **Temporary Use Permit.** Applications for Temporary Use Permit shall be received by the Community Development Director and follow the procedure as described in Chapter 15-05, Permissible Uses and Standards.
- F. **Amendments.** Requests for amendments or changes to the Development Code or Zone District Map shall be initiated with the Director. The amendment process shall proceed as provided for in Chapter 15-02, zoning Map Atlas, Districts and Annexations.
- G. **Development Code Interpretation.** The Director shall be responsible for interpretation of this Code and the Zone District Map. An appeal of the Director's interpretation may be made to the Planning Commis-

sion as provided for elsewhere in this Chapter.

- H. **Home Occupation License Review.** The Director shall review and make recommendations for Home Occupation License.
- I. **Sign Permit.** As provided in Chapter 15-10, Sign Regulations, the Director shall be responsible for issuance of permits for signs, and for enforcement of sign regulation.
- J. **Grading Permit.** As provided in Chapter 15-11, Development Review, the Director shall be responsible for issuance of permits for grading, and for enforcement of the grading regulations.

#### 15-01-14 Expiration Or Cancellation Of Licenses, Permits And Approvals

- A. **Expiration for Inaction.** Each license, permit or approval issued, as set forth herein, shall expire after 180 days if no construction is undertaken or no work done unless a different time period specifically set forth at the time of issuance of the license or permit or in this Code, or unless an extension is granted by the issuing agency prior to expiration.
- B. **Cancellation.** Failure to comply fully with the terms of any, permit or approval may be grounds for cancellation. Action to cancel any permit or approval may be taken on proper grounds by the person or agency which issued it. No conditional use permit, site plan review or existing structure approval, variance or special exception shall be canceled until after a hearing before the Planning Commission or Board of Adjustment as approved herein has been afforded the permittee. Not less than 15 days notice of a hearing on intention to cancel a permit or approval shall be given such permittee. Cancellation of a permit or approval by the Board of Adjustment or Planning Commission may be appealable in the same manner as the original action.

#### 15-01-15 Development To Be In Accordance With Terms Of Licenses, Permits Or Approvals

- A. All construction and commercial operations shall be in accordance to approved building permits, conditional use permits, approved site plans, business license, and other permits which may be required. No deviance from said permits or approvals shall be made unless the proper variances, special exceptions, or appeals have been granted as per the Sandy City Development Code.
- B. All construction and subsequent residential occupancy and use shall be in accordance to approved building permits, conditional use permits, approved site plans, and other permits which may be required. No deviance from said permits or approvals shall be made unless the proper variances, special exceptions, or appeals have been granted as per the Sandy City Development Code.
- C. No building permit shall be issued until all permits, reviews, or approvals required by this Code have been secured. Except as specifically provided herein, the securing of one required review or approval shall not exempt the recipient from the necessity of securing any other review or approval required by this Code.

#### 15-01-16 Hearings, Appeals And Amendments

- A. **Appeals and Hearings.** Appeal and hearing procedures from administration, interpretation or enforcement of the Development Code and Zone District Map are submitted to and heard by the Planning Commission or Board of Adjustment, as provided in this Code.
- B. **Amendments and Hearings.** This Development Code, including the Zone District Map, may be amended, but all proposed amendments shall be submitted first to the Department of Community Development

for review and recommendation to the Planning Commission. The Planning Commission shall review the proposal and make a recommendation to the City Council for its consideration. The City Council must hold a public hearing not more than 45 days after the recommendation from the Planning Commission and a motion to approve or deny the requested change must be decided. The Planning Commission shall have 30 days to respond to any request from the Council for recommendation and if none is received within 30 days after the request is made to the chair of the Planning Commission, the Council may adopt the amendment after they have held a public hearing.

#### 15-01-17 **Conformance To Ordinance Provisions**

All department officials and public employees of the City of Sandy who are vested with the duty or authority to issue permits shall conform to the provisions of this Code and shall issue no permit, certificate, or license for uses, buildings, or purposes in conflict with the provisions of this Code, and any such permit, certificate, or license issued in conflict with the provisions of this Code, intentionally or otherwise, shall be null and void.

#### 15-01-18 **Enforcement**

- A. **Enforcement Officer.** The Community Development Director is hereby designated and authorized as the officer charged with the enforcement of this Code. He shall enforce all the provisions of this Code, entering actions in the Court when necessary, and his failure to do so shall not legalize any violation of such provisions.
- B. **Code Interpretation.** The Planning Commission shall, in addition to other duties specified herein, answer questions concerning an interpretation of the Development Code.
- C. **Hardships, Special Exceptions or Appeals.** The Board of Adjustment shall, in addition to other duties specified herein, be charged with deciding appeals taken from decisions of the Community Development Department. The Board of Adjustment shall follow and be governed by all provisions of this Code and the provisions of the laws of the State of Utah.
- D. **Determination of Hearing Body.** In the event there is a question as to which body, the Planning Commission or the Board of Adjustment, shall consider a particular appeal from a decision of the Community Development Department, the question shall be presented to the City Attorney for a decision.
- E. **Code Administration.** The City of Sandy may, by resolution or ordinance, from time to time entrust the administration of this Code, in whole or in part, to any officer of Sandy City, without amendment to this Code.

#### 15-01-19 **Inspection of Property**

- A. **Inspection of Buildings, Structures and Land Uses.** The Community Development Director is hereby authorized to inspect or cause to be inspected all buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of the Land Development Code; provided, however, that no such inspection shall be required as a condition precedent to commencement or continuation of any construction, modification, or repair of any building or structure unless otherwise provided herein or elsewhere in the ordinances of Sandy City.
- B. **Right of Entry.** The Community Development Director or any employee of Sandy City who is authorized to represent the City shall have the right to enter any building for the purpose of determining the use thereof or to enter the premises for the purpose of determining compliance with the provisions of this Code; provided that such right of entry shall be exercised only at a reasonable hour and that in no case shall entry be made to any building in the absence of the owner or tenant thereof without the consent

of the owner or tenant or a written order of a court of competent jurisdiction.

- C. **Violation of Performance Standards.** The Director shall investigate any purported violation of performance standards; and, if necessary for such investigation, request that the Community Development Department employ qualified experts. The services of any such qualified experts employed by Sandy City to advise in establishing a violation shall be paid by the violator if said violation is established, otherwise by the City.

#### 15-01-20 Nuisance And Abatement

Any required fencing, landscaping, parking lot, lighting, or other required site plan elements, building or structure erected, constructed, altered, enlarged, converted, moved, removed or maintained contrary to the provisions of this Code, and any use of any conditional use permit, approved site plan other approved development plans and permits, land, building, or premise established, conducted, or maintained contrary to the provisions of this Code, shall be, and the same hereby is declared to be unlawful and a public nuisance. The City Attorney of the City of Sandy shall, upon request of the Community Development Director, immediately commence action or proceedings for the abatement and removal and injunction thereof in the manner provided by law, and shall take other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm or corporation from erecting, building, maintaining, or using any such building or structure or using property contrary to the provisions of this Code. The remedies provided for herein shall be cumulative and not exclusive.

#### 15-01-21 Penalties

- A. Violation of any of the provisions of this Development Code or of any adopted subdivision, official map, or major street plan ordinance or regulation, shall upon conviction be punishable as a Class C misdemeanor.
- B. The City, or any owner of real estate within the City, may, in addition to other remedies provided by law, institute injunctions, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate or remove the unlawful building, use or act.

#### 15-01-22 Planning Commission Established

- A. **Planning Commission Established.** There is hereby created a Planning Commission for Sandy City, Utah, to be known as the Sandy City Planning Commission. Said Commission shall consist of seven members and two alternates to be appointed by the Mayor, with the advice and consent of the City Council. The alternates shall attend all meetings but shall not vote on Commission decisions unless serving in place of a regular member. When an alternate is needed to fill in place of a regular member, the two alternate members shall rotate the responsibility. Additionally, one member of the City Council shall be appointed semi-annually by the Council to serve as the Council's liaison to the Planning Commission. Such Council member shall have the right to attend all meetings of the Commission with the right to take part in all discussions, but shall not vote on Commission decisions. Funding for the Commission shall be established annually by the City Council and may include a per diem for members and alternates for each official meeting attended.
- B. **Purpose of Planning Commission.** The Commission shall advise the City Council regarding legislative matters and advise the Mayor regarding administrative matters as more specifically set forth herein. It is the intent of the Mayor and the City Council that all policy-making powers of the City remain under

the control of elected officials.

- C. **Terms for Members.** The terms of office for the members of the Commission shall be four years commencing at noon on March thirty-first of the year in which the appointment is made. The terms of office for the Commission members shall be staggered at intervals so as to provide uniformity in policy and personnel. All members currently serving at the time of adoption of this Code may continue to serve out their current term.
- D. **Selection of Members.** Members of the Commission shall be selected from the residents of the City of Sandy. Vacancies for the term of any member whose term is not completed shall be filled for the unexpired portion of the term in the manner provided for in this Section. A member whose term has expired shall continue to serve until his successor has been appointed and approved.
- E. **Procedures.** The Planning Commission shall elect a chairperson every six months from its membership and may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Commission. Four members of the Commission shall constitute a quorum for the conduct of Commission business and no act of the Commission shall be effective unless at least four members concur in respect to it.
- F. **Staff Support.** A secretary of the Community Development Department shall be the secretary for the Planning Commission. The Director is assigned to provide staff support to the Commission, the level of which shall be determined by the Director in consultation with the Commission.

#### 15-01-23 Duties And Powers of Planning Commission

##### A. General Plan.

1. It shall be the function and duty of the Planning Commission, after holding public hearings, to prepare and recommend to the City Council a proposed General Plan for the physical development of Sandy City, including any areas outside of its boundaries, which, in the Commission's judgment, bear relation to the planning of the City. When considering territory outside the boundaries of the City action shall be taken after consultation with the legislative body concerned. The General Plan shall address and include at least the following:
  - a. Official Map
  - b. Growth, Community Identity and Land Use
  - c. Commercial/Industrial
  - d. Transportation
  - e. Community Facilities
  - f. Housing

The Planning Commission may from time to time recommend extending, amending, or adding to the General Plan.

2. In preparing the General Plan, the Planning Commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the City and its environs. A plan shall be made with the general purpose of guiding and accomplishing coordinated, efficient and harmonious development of the City which will, in accordance with existing and future needs, best promote public health, safety, and general welfare, as well as efficiency and economy in the process of development.



3. Public Hearings for General Plan Adoption - Planning Commission. After completing a proposed general plan or general plan amendment for all or part of Sandy City, the planning commission shall schedule and hold a public hearing on the proposed plan or plan amendment.
  - a. The planning commission shall provide reasonable notice of the public hearing at least fourteen [14] days before the date of the hearing.
  - b. After the public hearing, the planning commission may make changes to the proposed general plan.
  - c. The planning commission shall then forward the proposed general plan or general plan amendment to the City Council.
4. Public Hearings for General Plan Adoption - City Council. The City Council shall hold a public hearing on the proposed general plan or general plan amendment recommended to it by the Planning Commission.
  - a. The City Council shall provide reasonable notice of the public hearing at least fourteen [14] days before the date of the hearing.
  - b. After the public hearing, the City Council may make any modifications to the proposed general plan or general plan amendment that it considers appropriate.
  - c. The City Council may:
    - (1) adopt the proposed general plan or general plan amendment without amendment;
    - (2) amend the proposed general plan or general plan amendment and adopt or reject it as amended; or
    - (3) reject the proposed general plan or general plan amendment.

**B. Land Development Code (Zoning Ordinance).**

1. Preparation. It shall be the function and duty of the Planning Commission to prepare and recommend to the City Council proposed zoning ordinances (Land Development Code) or amendments, including both the full text of the Code and maps, representing the recommendations of the Planning Commission for zoning of the City.

All recommendations made by the Planning Commission for inclusion with the Land Development Code shall be made in accordance with a General Plan designed to promote the health, safety, morals, convenience, and general welfare of Sandy City and its inhabitants.

Such recommendations shall be made with reasonable consideration of among other things, the character of each Community District within the city and its suitability for particular uses to conserving the value of buildings, and encouraging the most appropriate use of land throughout Sandy City.

2. Reports. The Planning Commission may make reports and recommendations relating to the plan and development of the City to public officials and agencies, public utility companies, civic, educational,

professional, and other organizations and citizens.

3. Other. The Planning Commission may, in the performance of its functions, enter upon any land at reasonable times to make examinations and surveys. In general, the Planning Commission shall have such powers as may be necessary to enable it to perform its functions and promote City planning and zoning.

**C. Subdivision Regulations.**

1. It shall be the function and duty of the Planning Commission to:
  - a. prepare and recommend a proposed subdivision ordinance that regulates the subdivision of land within the City or amendments thereto to the City Council.
  - b. hold a public hearing on the proposed subdivision ordinance or amendments before making its final recommendation to the City Council; and
  - c. provide reasonable notice of the public hearing at least fourteen (14) days before the date of the hearing.
2. The City Council shall:
  - a. hold a public hearing on the proposed subdivision ordinance or amendments recommended to it by the Planning Commission; and
  - b. provide reasonable notice of the public hearing at least fourteen (14) days before the date of the hearing.
3. After the public hearing, the City Council may:
  - a. adopt the subdivision ordinance or amendments as proposed;
  - b. amend the subdivision ordinance or amendments and adopt or reject it as amended; or
  - c. reject the ordinance or amendments.
4. A person may not file a plat of a subdivision of land in the county recorder's office unless recommendation has been received from the Planning Commission and:
  - a. it has been approved by the Mayor; and
  - b. the approval is entered in writing on the plat by the Mayor and attested by the City Recorder.

- D. Conditional Use Permit.** It shall be the function and duty of the Planning Commission to review, make comments, and approve or deny conditional use permits as set forth in Chapter 15-05, Permissible Uses and Standards, or at its discretion, recommend review by the City Council. Application for a Conditional Use Permit shall be made by the property owner or certified agent thereof to the Director or other authorized personnel. The application shall be accompanied by maps, drawings, or other documents sufficient to meet the requirements of Chapter 15-05, Permissible Uses and Standards, and shall proceed as specified in that chapter. The granting of a Conditional Use Permit shall not exempt the applicant from other relevant provisions of this or other ordinances of Sandy City.

- E. Advise the City Council on matters as the City Council directs.
- F. Hear or decide any matters that the City Council designates.
- G. Exercise any other powers:
  - 1. That are necessary to enable it to perform its function; or
  - 2. Delegated to it by the City Council.

#### 15-01-24 **Conformance With General Plan - Public Facilities or Property**

- A. After the City Council has adopted a General Plan for Sandy City, or any amendments to the General Plan, no street, park or other public way, ground, place or space, no public building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless:
  - 1. it conforms to said plan; or
  - 2. it has been considered by the Planning Commission and, after receiving the advice of the Planning Commission, the City Council approves it as an amendment to the General Plan.

#### B. **Reserved**

#### 15-01-25 **Appeals And Rehearing of Planning Commission Decision**

- A. **Appeals.** Any person aggrieved by any decision of the Planning Commission of Sandy City or any administrative officer shall have the right to make such appeals as may be provided by this Code or the laws of the State of Utah.
- B. **Re-hearings.** On any application for a re-hearing, the applicant must allege new facts (substantially incomplete information, new knowledge, or material errors) and prove same at a hearing. It is not the prerogative of the Commission to change its decision unless new evidence can be presented of which the Commission had no knowledge at the original hearing.

#### 15-01-26 **Purpose of the Board of Adjustment**

In order to provide for just and fair treatment in the administration of local zoning ordinances, and to ensure that substantial justice is done, a Board of Adjustment has been created to exercise the powers and duties provided hereafter.

#### 15-01-27 **Creation of the Board of Adjustment**

- B. The Board of Adjustment shall consist of five regular members and two alternate members.
  - 1. The mayor shall appoint the members and alternate members with the advice and consent of the City Council for a term of five years.
  - 2. The mayor shall appoint regular members of the Board of Adjustment to terms so that the term of one

member expires each year. The mayor shall appoint alternate members in such a manner as that at least a two and one-half year gap exist between term expirations.

- C. One member of the Sandy City Planning Commission shall be appointed semi-annually by the Planning Commission to serve as the Planning Commission's liaison to the Board of Adjustment. Such Planning Commission member shall have the right to attend all meetings of the Board of Adjustment with the right to take part in all discussions, but shall not vote on Board of Adjustment decisions.

#### **15-01-28 Membership of Board of Adjustment**

- A. All members and alternate members of the Board shall be residents of the City of Sandy, Utah. Any member or alternate member of the Board relocating their primary residence outside the limits of the City of Sandy shall resign their appointment to the Board within thirty days prior to their relocation.
- B. Alternate members are to serve in the absence of members of the Board upon request of the Chairman of the Board.
  - 1. Alternate members are to attend meetings of the Board. The Chairman shall establish a service rotation system, so that no alternate serves more often than the other.
  - 2. No more than two alternate members may sit at any meeting of the Board of Adjustment at one time.
- C. **Removal From the Board.**
  - 1. The Mayor may remove any member of the Board of Adjustment for cause if written charges are filed against the member with the Mayor.
  - 2. The Mayor shall provide the member with a public hearing if he requests one.
- D. **Vacancy on the Board.**
  - 1. The Mayor, with the advise and consent of the City Council, shall fill any vacancy.
  - 2. The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

#### **15-01-29 Procedures of the Board of Adjustment**

- A. The Board of Adjustment shall:
  - 1. Organize and elect a chairperson; and
  - 2. Adopt rules that comply with all applicable state statutes and city ordinances.
- B. The Board of Adjustment shall meet at the call of the chairperson and at any other times that the Board of Adjustment determines.
- C. The chairperson, or, in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

- D. All meetings of the Board of Adjustment shall comply with the requirements of Chapter 4, Title 52, Open and Public Meetings, Utah Code Annotated.
1. The Board of Adjustment shall:
    - a. Keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and
    - b. Keep records of its examinations and other official actions.
  2. The Board of Adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.
  3. The Board of Adjustment shall file its records in the office of the Board of Adjustment, located in the Community Development Department.
  4. All records in the office of the Board of Adjustment are public records.
- E. When hearing a request for a variance, special exception, or alleged error to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant, the concurring vote of three members of the Board of Adjustment is necessary.
- F. Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.
- G. The City Council may fix per diem compensation for the members of the Board of Adjustment, based on necessary and reasonable expenses and on meetings actually attended.

#### 15-01-30 Powers and Duties of the Board of Adjustment

- A. The Board of Adjustment shall hear and decide:
1. appeals from zoning decisions applying the zoning ordinance;
  2. special exceptions to the terms of the zoning ordinance; and
  3. variances from the terms of the zoning ordinance.
- B. The Board of Adjustment shall make determinations regarding the existence, expansion, or modification of a nonconforming use.

#### 15-01-31 Special Exceptions

- A. The Board may hear and decide special exceptions to the terms of the Sandy City Development Code, provided that such special exceptions on which the Board shall be authorized to pass shall be limited to the following:
1. Authorize the alteration, movement or enlargement of or addition to a building or structure or sign occupied by a nonconforming use, provided it can be shown by the applicant that:
    - a. The building, structure or sign is legally nonconforming; and

- b. The alteration, movement, enlargement or addition is in keeping with the intent of this Code; and
  - c. That the proposed alteration, movement, enlargement or addition will not impose undue burden upon the lands located in the vicinity of the nonconforming use or structure.
  - d. That the proposed deviation from code requirements is the minimum needed to achieve a reasonable use of the property, which use is to be justified by written findings of the Board of Adjustment.
  - e. That all requirements governing nonconforming signs will be adhered to.
2. Permit the building on a nonconforming lot, after public hearing, where it can be shown by the applicant that:
- a. The lot is legally nonconforming.
  - b. The construction of a building upon the nonconforming lot will be in harmony with one or more of the purposes of this Title as stated in Section 15-01-03 hereof and shall be in keeping with the intent of this ordinance.
  - c. The proposed building will not impose undue burden upon the lands located in the vicinity of the nonconforming lot.
3. Where a parcel of land was at least 1-1/2 times as wide and 1-1/2 times as large in area as required for a lot in the district at the time this Code was adopted, permit the division of the parcel into two lots. The person requesting the special exception must show that the land in question qualifies for this exception.
4. Where a zone boundary line divides a lot which was in single ownership at the time of passage of this Code, the Board of Adjustment may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
5. Permit the installation of an electrical transmission line above ground provided the Board finds that exposure to electrical magnetic fields and other risks and adverse impact to land value and aesthetics will be reasonably mitigated by prudent avoidances measures.
- a. The term “prudent avoidance” shall refer to those practices and standards which serve to minimize degradation of community aesthetics and real property values, and avoid exposure to electrical and magnetic fields and other public risks. Such practices and standards include, but are not limited to purchasing additional right-of-way, altering line configuration, selection of alternative routes, utilizing or enlarging capacity in existing substations or transmission facilities, undergrounding, shielding, public education, research and testing, and discouraging siting near sensitive areas and structures such as residences, hospitals, churches, libraries, parks, child-care centers, and schools.
  - b. The person or entity proposing to install transmission lines shall bear the burden of showing reasonable mitigation by prudent avoidance.

6. Permit a structure which is attached to the dwelling structure (“attached structure”) to extend into the required side yard setback provided the owner/applicant complies with the following:
  - a. Establishes that the attached structure existed at the time of the adoption of this section (05/21/96);
  - b. The attached structure complies with all other requirements of this Development Code, the Uniform Building Code (UBC), the Uniform Fire Code (UFC), and other applicable city, state or federal laws;
  - c. The attached structure conforms and is aesthetically compatible with the design, color and materials of the dwelling structure to which it is attached;
  - d. The current owner/applicant purchases a building permit which will provide that all appropriate inspections will be made; and
  - e. The current owner/applicant complies with all requirements, established pursuant to the inspections or by law, necessary to comply with the UBC, UFC and other city, state or federal laws.
  - f. Extension of an attached structure into the side yard setback will be allowed on one side of the dwelling only. In order to obtain approval for an attached structure to extend into one side yard setback, all structures encroaching into the other side setback must be removed and the setback maintained free of obstructions (exclusive of fencing) for fire access into the rear of the dwelling.
  - g. After issuance of a permit for an attached structure hereunder, the dwelling structure may not be altered, enlarged, added to or moved unless and until the attached structure is removed and all structures on the property thereafter comply with the side yard setback regulations.
  - h. After issuance of a permit hereunder, the attached structure shall not be altered, enlarged, added to, moved or its use changed. If such enlargement, alteration, addition, movement or change of use occurs, the attached structure must be restored to the configuration and use upon which the permit was issued or it must be removed entirely.
  - i. A photograph of the dwelling structure and its attached structure shall be submitted with the application for a special exception.
  - j. After approval of a special exception and issuance of a building permit and after inspections are made and all requirements complied with, the City will issue a Notice of Compliance which will set forth the conditions under which the approval and permit were issued. The Notice of Compliance must be filed with the County Recorder and proof of that filing must be submitted to the Department.
- B. Before taking action on any special exception request, the Board shall hold a public hearing thereon. In the event that the Board decides to authorize a building permit, it shall have the power to specify the exact location, ground area, height, and other details and conditions of extent and character and also the duration of the building, structure, or part thereof to be permitted.

#### 15-01-32 Variances

- A. Any person, authorized agent in writing, or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some

other beneficial interest, may apply to the Board of Adjustment for a variance from the terms of the zoning ordinance.

1. The Board of Adjustment may grant a variance only if:
  - a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
  - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
  - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - e. The spirit of the zoning ordinance is observed and substantial justice done.
2. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection A 1, the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship:
  - a. is located on or associated with the property for which the variance is sought; and
  - b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection A 1, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. A self-imposed hardship inflicted on a property by action of a previous owner shall not be reason for granting a variance to the current owner.
4. In determining whether or not there are special circumstances attached to the property under Subsection A 1, the Board of Adjustment may find that special circumstances exist only if the special circumstances:
  - a. Relate to the hardship complained of; and
  - b. Deprive the property of privileges granted to other properties in the same district.
- B. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- C. Variances run with the land.
- D. The Board of Adjustment and any other body may not grant use variances.
- E. In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:



1. Mitigate any harmful affects of the variance; or
2. Serve the purpose of the standard or requirement that is waived or modified.

#### 15-01-33 Appeals to the Board of Adjustment

##### A. Alleged Errors

1. The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.
2. The appeal to the board shall be filed with the Community Development Department within thirty (30) days from the date of decision.
3. Any officer, department, board, or bureau of a municipality affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the zoning ordinance may appeal any decision to the Board of Adjustment.

##### B. The person or entity making the appeal has the burden of proving that an error has been made.

1. Only zoning decisions applying the zoning ordinance may be appealed to the Board of Adjustment.
2. A person may not appeal, and the Board of Adjustment may not consider, any zoning ordinance amendments.

##### C. Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

#### 15-01-34 Routine and Uncontested Matters - Delegation for Review

##### A. With the consent of the City Council, the Mayor may appoint an administrative officer to decide routine and uncontested matters before the Board of Adjustment.

##### B. The Board of Adjustment shall:

1. Designate which matters may be decided by the administrative officer; and
2. Establish guidelines for the administrative officer to comply with in making decisions.

##### C. Any person affected by a decision of the administrative officer may appeal the decision to the Board of Adjustment as provided in this part.

#### 15-01-35 District Court Review of a Board of Adjustment Decision

##### A. Any person adversely affected by any decision of the Board of Adjustment may petition the district court for a review of the decision.

##### B. In the petition, the plaintiff may only allege that the Board of Adjustment's decision was arbitrary,

capricious, or illegal.

C. The petition is barred unless it is filed within 30 days after the Board of Adjustment's decision is final.

D. The Board shall:

1. Transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
2. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

E. Court Review.

1. If there is a record,

A. The district court's review is limited to the record provided by the Board of Adjustment.

B. The court may not accept or consider any evidence outside the Board of Adjustment's record unless that evidence was offered to the Board of Adjustment and the court determines that it was improperly excluded by the Board of Adjustment.

2. If there is no record, the court may call witnesses and take evidence.

F. The court shall affirm the decision of the Board of Adjustment if the decision is supported by substantial evidence in the record.

G. The filing of a petition does not stay the decision of the Board of Adjustment.

H. Before filing the petition, the aggrieved party may petition the Board of Adjustment to stay its decision.

1. Upon receipt of a petition to stay, the Board of Adjustment may order its decision stayed pending district court review if the Board of Adjustment finds it to be in the best interest of the municipality.
2. After the petition is filed the petitioner may seek an injunction staying the Board of Adjustment's decision.

#### 15-01-36 Nonconforming Use Provisions - Purpose

It is the purpose of these regulations to control and gradually eliminate those uses of land or buildings, which although legal at the time of their establishment, do not now conform to the use regulations of the district within which they are situated. Such uses shall be deemed nonconforming uses. Likewise, these regulations are intended to control and gradually eliminate buildings which, although legal at the time of their erection, do not now conform to the height, bulk, and location regulations of the zone district within which they are situated. Such buildings shall be deemed to be nonconforming buildings. Any building or use which was permitted prior to enactment of this Code, but which is designated by this Code as a conditional use, shall not be considered nonconforming and shall not be subject to the provisions of this Chapter. This Chapter is also established to control and gradually eliminate sites and lots which were legal at the time of their establishment, but no longer meet the regulations of the district within which they are located. Such sites and lots shall be designated as nonconforming sites and lots.

**15-01-37 Continuing Existing Uses**

Except as hereinafter specified, any use, building, or structure, lawfully existing at the time of the enactment or subsequent amendment of this Code, may be continued, even though such use, building, or structure does not conform with the provisions of this Code for the district in which it is located. Except as otherwise provided by law, nothing in this Code shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

**15-01-38 Construction Approved Prior To Ordinance**

A building, structure, or part thereof which does not conform to the regulations of the district in which it is situated, but for which a building permit was legally issued and construction started prior to the enactment of this Code, may be completed in accordance with such plans providing work has progressed continuously and without delay. Such building or structure shall be deemed to be nonconforming and shall be subject to the regulations set forth herein.

**15-01-39 Nonconforming Uses, Substitution, Extension, Discontinuance, Etc.**

Unless otherwise approved by the Board of Adjustment, a nonconforming use shall not be enlarged, extended, or changed unless the use is changed to a use permitted in the district in which it is located, and a nonconforming building shall not be reconstructed or structurally altered unless such alteration shall result in removing those conditions of the building which render it nonconforming, except as follows:

**A. Substitution or Extension.**

1. When authorized by the Board of Adjustment in accordance with this Code, a nonconforming use which is determined to be of a more desirable nature may be substituted for another nonconforming use or more closely meets the standards set forth in this code.
2. Whenever a nonconforming use has been changed to a conforming use such use shall not thereafter be changed to a nonconforming use.
3. Repairs and structural alterations may be made to a nonconforming building provided that the floor space of such building is not increased.
4. A building or structure lacking sufficient automobile parking space in connection therewith as required by this ordinance may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this ordinance for such alterations or enlargement.
5. In the event a nonconforming building or structure is damaged or partially destroyed by calamity or act of nature to the extent of not more than one-half (½) of its market value, the occupancy or use of such building structure or part thereof which existed at the time of such partial destruction may be continued or resumed provided that restoration is started within a period of one year and is diligently pursued to completion. In the event such damage or destruction exceeds one-half (½) of its market value of such nonconforming building or structure, no repairs or reconstruction shall be made, except in the case of residences or accessory farm buildings, unless every portion of such building or structure is made to conform to all regulations for new buildings in the district in which it is located, as determined by the Chief Building Official, and other requirements as may be imposed at site plan review.

6. Application for substitution, enlargement or extension of a nonconforming use as provided in this Section shall be made to the Board of Adjustment.
  7. A vacant building or structure may be occupied by a use for which the building or structure is designed or intended if so occupied within a period of one year after the use became nonconforming.
- B. **Cessation of Use.** A use shall be deemed to have ceased when it has been discontinued for a period of one year or more, whether or not the intent is to abandon said use.

#### 15-01-40 **Amortization of Nonconforming Uses**

In order to respond to exceptional or unusual circumstances involving the termination of nonconforming uses, the City Council may approve an amortization formula for the termination of such uses over a period of time to be agreed upon with the owner of the property, subject to reasonable regulations with respect to the continuation of the nonconforming use during the amortization period.